

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ROSE, Minors.

UNPUBLISHED

August 16, 2011

No. 302003

Emmet Circuit Court

Family Division

LC No. 09-005824-NA

Before: MARKEY, P.J., and SAAD and GLEICHER, JJ.

PER CURIAM.

Children’s Protective Services became acquainted with the Rose-Jackson family in 2005, when the eldest two children were still babies. Over the next four years, CPS received a total of 13 referrals about the family, two of which were substantiated. The DHS and CPS provided intensive services to the family on two separate prior occasions with the goal of keeping the family intact. Despite these efforts, respondents were unable to safely and adequately protect their children. In 2009, CPS removed the children from respondents’ care and again provided services, this time with the goal of family reunification. Fourteen months later, when respondents were still unable to safely and adequately care for their children, the Emmet Circuit Court terminated their parental rights. Based on the evidence of respondents’ repeated inability to improve their parenting skills despite the provision of intensive services, we affirm the trial court’s judgment.

I. FACTS AND PROCEDURAL HISTORY

CPA removed the minor children from respondents’ care following a surprise home visit on October 2, 2009. At that time, the three children shared a bedroom with respondent-mother. They lived in a small, filthy mobile home with respondent-mother’s parents and sister, as well as her sister’s four children. School officials reported that the children were chronically dirty and malodorous, were repeatedly absent from class or arrived tardy, and the two eldest children suffered from severe speech delays. Further, there was evidence that the maternal grandfather physically abused all seven of the minor children who lived in the small mobile home. Respondents entered a plea of admission to the allegations in the petition to take jurisdiction over the children. The court took jurisdiction based on respondents’ “failure to provide, when able to do so, support, education, medical, surgical, or other necessary care for health or morals” and the existence of “an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian.”

The court did not conduct the termination trial until December 16, 2010. In the 14 months that the children remained in foster care, neither respondent successfully completed the required elements of their parent-agency agreements. Respondent-father initially showed little inclination to participate in mental health treatment and missed many supervised visits with the children. During this short span of time, respondent-father married another woman. Respondent-father's wife previously had her parental rights terminated to her own children because she was convicted of first-degree criminal sexual conduct against a child under the age of 13. Respondent-father also moved back and forth from Mackinac Island for seasonal employment and failed to maintain stable housing. The agency was unable to communicate with respondent-father for long stretches of time because he did not have a phone.

Respondent-mother also failed to fully comply with court-ordered counseling, which she blamed on transportation and work issues. However, respondent-mother admitted to having a diagnosed "chemical imbalance" for which she refused treatment. Service providers indicated that respondent-mother required counseling to overcome her issues with low self-esteem and dependency on her parents. Absent such counseling, respondent-mother would not be able to protect her children from physical abuse at the hands of their grandfather. During the proceedings, respondent-mother moved between her brother's home and the homes of friends, ultimately returning to her parents' home. She allowed the children's maternal grandmother to dominate her supervised visits with the children, during which the grandmother coached the children to recant the allegations against their grandfather. Most damaging to her case, by the time of the termination hearing, respondent-mother had convinced herself that the children had lied about incidents of physical abuse in the home.

In the last few weeks leading up to the termination trial, both respondents finally began working together toward reunification with the children. Respondent-father divorced his wife and resumed his relationship with respondent-mother. While many obstacles arose during the lease application process, respondents finally signed a lease on a three-bedroom mobile home days before the termination trial. Despite respondents' recent signs of improvement, the trial court terminated their parental rights to the three minor children pursuant to MCL 712A.19b(3)(c)(i) and (j). The court indicated that the termination decision was based on chronic, generalized neglect of the children's needs, inability to protect the children from abuse perpetrated by the maternal grandfather, respondents' need for long-term mental health treatment to enable them to parent, and the inability to evaluate respondents' housing conditions given their recent acquisition of a new residence.

II. LEGAL ANALYSIS

Pursuant to MCL 712A.19b(3), a trial court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests," the court is required by law to order termination. MCL 712A.19b(5). This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests. MCR 3.977(K); *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007). A decision "is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite

and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes us as more than just maybe or probably wrong. *Trejo*, 462 Mich at 356.

The trial court based its termination decision on the following provisions of MCL 712A.19b(3):

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

Here, the petitioner presented clear and convincing evidence to support the grounds for termination. More than 182 days had elapsed since the initial dispositional order in this case and the “conditions that led to the adjudication” had not been satisfactorily rectified. During much of the proceedings, respondent-mother continued to reside with her parents. Respondents did not secure independent housing until two days before the termination trial. Given the short notice, neither the DHS nor the court could assess whether the home was safe, clean and adequate for a family of five. Respondent-mother continued to show an inability to protect her children from their maternal grandfather’s physical abuse as she denied the existence of any abuse on the record.

Further, the petitioner presented clear and convincing evidence that neither respondent would be able to resolve these issues “within a reasonable time considering the child[ren]’s age[s].” Service providers for both respondents opined that each required two or more years of extensive and frequent therapy to resolve their own mental health issues before they could safely parent their children. At the time of the termination trial, the children were then seven, six, and three years old. They had been involved with the child protective system for five years and had already been in foster care for 14 months. The trial court did not commit clear error in concluding that the children could not wait another two years before permanent plans were arranged for their care. Accordingly, the court did not err in supporting termination under MCL 712A.19b(3)(c)(i).

This same evidence supported the court’s conclusion that the children faced a reasonable likelihood of harm if returned to respondents’ care. Most significantly, respondent-mother had not resolved her dependency issues with her parents. She lived with her parents until two days before the termination trial. At the trial, respondent-mother expressly stated that she disbelieved the children’s allegations of physical abuse at the hands of her father, the children’s maternal grandfather. Although respondent-mother testified that she would follow the court’s order and

deny her father access to the children, her actions and statements evinced that she would be unable to protect her children. Accordingly, the court also properly supported termination under MCL 712A.19b(3)(j).

We further reject respondents' assertion that termination was not in the children's best interests. It is not disputed that the children love and miss their parents. However, this bond does not outweigh the risk of harm to the children caused by respondents' lack of consistent commitment to becoming adequate, protective parents. Given these young children's need for permanency, the trial court did not err in holding that termination of the respondents' rights was in the children's best interests.

Affirmed.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Elizabeth L. Gleicher